

DIVISION III

CA07-33

September 12, 2007

LINDA GREGSON

APPELLANT

APPEAL FROM THE POPE COUNTY
CIRCUIT COURT
[NO. CV 05-595]

V.

POPE COUNTY TAX ASSESSOR and
BOARD OF EQUALIZATION

APPELLEES

HON. KEITH N. WOOD,
JUDGE

AFFIRMED

Appellant Linda Gregson, pro se, appeals the Pope County Circuit Court's August 16, 2006 order of dismissal. Appellant contends that appellees Pope County Tax Assessor and Board of Equalization failed to state with particularity the reasons for dismissal in their motion to dismiss; that the appellees did not file their motion to dismiss in a timely manner; and that she was unable to comply with District Court Rule 9 because there was no record made in the county court proceedings. We affirm the circuit court's order of dismissal.

When appellant appealed the decision of the Pope County Court to the Pope County Circuit Court, she failed to file a record of the proceedings from county court pursuant to Arkansas District Court Rule 9. She did, however, file an untitled pleading requesting the circuit court to order appellees to reappraise her properties. Appellees filed a motion to dismiss for noncompliance with Rule 9. The circuit court granted appellees' motion to

dismiss with prejudice. Appellant filed a motion to set aside the judgment, which was deemed denied pursuant to Arkansas Rule Civil Procedure 59, 60(a) and (c). This appeal follows.

In cases where the appellant claims that the trial court erred in granting a motion to dismiss, appellate courts review the trial court's ruling using a de novo standard of review. *Nucor Corp. v. Kilman*, 358 Ark. 107, 186 S.W.3d 720 (2004). This court will not reverse a finding of fact unless it is clearly erroneous. *Sanford v. Sanford*, 355 Ark. 274, 137 S.W.3d 391 (2003). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left, on the entire record, with a definite and firm conviction that a mistake had been made. *Id.* A trial court's conclusion on a question of law, however, is given no deference on appeal. *Id.*

District Court Rule 9 states in pertinent part as follows:

(a) *Time for Taking Appeal.* All appeals in civil cases from district courts to circuit court must be filed in the office of the clerk of the particular circuit court having jurisdiction of the appeal within 30 days from the date of the entry of judgment. The 30-day period is not extended by a motion for judgment notwithstanding the verdict, a motion for new trial, a motion to amend the court's findings of fact or to make additional findings, or any other motion to vacate, alter or amend.

(b) *How Taken.* An appeal from a district court to the circuit court shall be taken by filing a record of the proceedings had in the district court. Neither a notice of appeal nor an order granting an appeal shall be required. It shall be the duty of the clerk to prepare and certify such record when requested by the appellant and upon payment of any fees authorized by law therefor. The appellant shall have the responsibility of filing such record in the office of the circuit clerk.

(c) *Unavailability of Record.* When the clerk of the district court, or the court in the absence of a clerk, neglects or refuses to prepare and certify a record for filing in the circuit court, the person desiring an appeal may perfect his appeal on or before the 30th day from the date of the entry of the judgment in the district court by filing an affidavit in the office of the circuit court clerk showing that he has requested the clerk

of the district court (or the district court) to prepare and certify the records thereof for purposes of appeal and that the clerk (or the court) has neglected to prepare and certify such record for purposes of appeal. A copy of such affidavit shall be promptly served upon the clerk of the district court (or the court) and the adverse party.

Our supreme court recently dealt with District Court Rule 9, stating as follows:

It is true that the District Court Rules are mandatory and jurisdictional, and that failure to comply with those rules mandates dismissal of an appeal. *See J & M Mobile Homes, Inc. v. Hampton*, 347 Ark. 126, 60 S.W.3d 481 (2001) (requiring strict compliance with Rule 9); *Pike Avenue Dev. Co. v. Pulaski County*, 343 Ark. 338, 37 S.W.3d 177 (2001); *Pace v. Castleberry*, 68 Ark. App. 342, 7 S.W.3d 347 (1999) (Rule 9's thirty-day limit for filing an appeal is both mandatory and jurisdictional, and the failure to either file the record with the clerk or file an affidavit showing the record has been requested from the clerk within those thirty days precludes the circuit court from having jurisdiction over the appeal).

Velek v. State (City of Little Rock), 364 Ark. 531, ___ S.W.3d ___ (2006).

Appellant contends that appellees failed to state with particularity the reasons supporting dismissal in their motion to dismiss filed in circuit court. Arkansas Rule of Civil Procedure 7 (b)(1) requires that the motions filed “shall state with particularity the grounds therefor. . .” Appellant claims that appellees’ only specifically-stated reason for dismissal was her failure to file within the thirty-day limit prescribed by law.

However, examination of appellees’ motion to dismiss reveals that appellees clearly alleged that appellant failed to comply with the statutes specifying the procedures for an appeal and that more than thirty days had passed since the entry of the judgment of the county court. Even though appellant argues that she filed her notice of appeal within thirty days of the entry of the order of dismissal, her argument fails to recognize that her appeal was not perfected within that time period.

Appellees claim, and we agree, that the circuit court was correct in its ruling because appellant failed to follow the requirements of Rule 9 by failing to file a record of the proceedings in district court or an affidavit provided for pursuant to subsection (c) of that rule. Under *Pike Avenue Development, supra*, the supreme court made it clear that an appeal from a decision of the county court is governed by Rule 9.

Appellant seems to argue for her second point on appeal that appellees failed to comply with applicable rules regarding the time for filing of pleadings and motions. Appellant claims that her complaint and request for appeal was filed in circuit court on December 14, 2005, and that appellees filed their motion to dismiss on January 4, 2006, which is a twenty-one day time period. However, she does not allege anything on this point other than “ARCP requires a 20 day limit on filing motions and other pleadings.” Appellees claim that there is no indication in the record that the circuit court failed to follow Arkansas law regarding the stated time for filing of pleadings and motions. The record supports the circuit court’s decision based on appellant’s failure to comply with District Court Rule 9 when trying to perfect her appeal.

Finally, appellant argues that she was unable to conform to District Court Rule 9 because of “error of application.” She claims that she was following the directive of the county judge when she filed her complaint and request for appeal in circuit court. Further, she argues that the county court did not keep a court record on the day of her county court hearing, and she was thus prohibited from following Rule 9’s mandate.

However, appellant's failure to file the record of proceedings from the county court in the circuit court or to take any other action to perfect her appeal, in addition to the filing of her untitled pleading, deprived the circuit court of any ability to hear or decide the appeal. *Pike Avenue Development, supra*. Based on the foregoing, the circuit court's dismissal is affirmed.

Affirmed.

GRIFFEN and VAUGHT, JJ., agree.